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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/687,848	10/17/2003	Richard S. Ginn	937.04.01	2084
8685 7590 10/25/2011 DERGOSITS & NOAH LLP Three Embarcadero Center Suite 410 SAN FRANCISCO, CA 94111				
EXAMINER				
TYSON, MELANIE RUANO				
ART UNIT		PAPER NUMBER		
3773				
MAIL DATE		DELIVERY MODE		
10/25/2011		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary**Application No.**

10/687,848

Applicant(s)

GINN, RICHARD S.

Examiner

MELANIE TYSON

Art Unit

3773

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 September 2011.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ An election was made by the applicant in response to a restriction requirement set forth during the interview on ____; the restriction requirement and election have been incorporated into this action.
- 4) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 5) ☒ Claim(s) 1,3,5,7,9 and 11 is/are pending in the application.
- 5a) Of the above claim(s) 5 and 7 is/are withdrawn from consideration.
- 6) ☐ Claim(s) ____ is/are allowed.
- 7) ☒ Claim(s) 1,3,9 and 11 is/are rejected.
- 8) ☐ Claim(s) ____ is/are objected to.
- 9) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 10) ☐ The specification is objected to by the Examiner.
- 11) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 12) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-CB00)
Paper No(s) Mail Date ____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s) Mail Date ____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: ____

DETAILED ACTION

This action is in response to the applicant's amendment received 01 September 2011. The application is not in condition for allowance for the reasons set forth below. Claims 2, 4, 6, 8, 10, and 12 remain cancelled. Claims 5 and 7 remain withdrawn from consideration.

Response to Arguments

Applicant's arguments with respect to claims 1, 3, 9, and 11 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1, 3, 9, and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kensey (U.S. Patent No. 4,744,364) and Belhe et al. (U.S. Pub. No. 2004/0215232 A1).

Kensey discloses a locator device (see entire document) comprising an elongate member (32), wherein the distal region has a substantially uniform diameter (for example, see Figure 1), and a bioabsorbable and expandable occlusion member (30; for example, see column 3, lines 53-54 and 66) releasably attached by an attachment (the relationship between 36 and 38 serve as the attachment) to a specific position on the elongate member (on the distal position; for example, see Figure 1), wherein the device and its components are capable of performing the functions claimed. Kensey further discloses the elongate member comprises a lumen in contact with the occlusion member (for example, see Figure 1), but fails to disclose a distal opening and a proximal opening connected by the lumen, wherein the occlusion member is located distally of the distal opening such that blood can enter the distal opening, flow through the lumen, and exit the proximal opening without passing through the occlusion member.

Belhe also discloses a locator device comprising an elongate member (12) for locating a blood vessel and delivering an occlusion member (for example, see Figure 2D). Belhe teaches providing the elongate member with distal (18) and proximal (20) openings connected by the lumen of the elongate member such that blood may pass therebetween to provide the operator with visual feedback as to the position of the elongate member (blood flow indicates the elongate member is within the vessel or artery and lack of blood flow indicates the elongate member is outside of the blood vessel or artery; for example, see paragraph 35). Therefore, to provide Kensey's elongate member with proximal and distal openings as taught Belhe would have been

obvious to one having ordinary skill in the art at the time the invention was made. Doing so would provide visual feedback to the operator as to the location of the device, thus ensuring proper positioning of the occlusion member. Kensey's occlusion member is located on the distal end of the distal portion of the elongate member and Belhe teaches providing the distal opening proximal of the distal end on the distal portion of the elongate member. These teachings yield the occlusion member located distally of the distal opening. Furthermore, to provide the occlusion member distal of the distal opening would have been obvious to one having ordinary skill in the art at the time the invention was made to ensure the occlusion member does not interfere with the distal opening prior to and/or during deployment of the occlusion member.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melanie Tyson whose telephone number is (571) 272-9062. The examiner can normally be reached on Monday through Thursday 8-7 (IFP).

If attempts to reach the examiner by telephone are unsuccessful, please contact the examiner's supervisor, Corrine McDermott, at (571) 272-4754. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

If there are any inquiries that are not being addressed by first contacting the Examiner or the Supervisor, you may send an email inquiry to

TC3700 Workgroup D Inquiries@uspto.gov.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Melanie Tyson/
Primary Examiner, Art Unit 3773
October 20, 2011